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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/655,170	09/04/2003	Gerald D. Bashuk		9009

7590 08/10/2006

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EXAMINER

LHYMN, EUGENE

ART UNIT PAPER NUMBER

3727

DATE MAILED: 08/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/655,170	<b>Applicant(s)</b> BASHUK, GERALD D.	
	<b>Examiner</b> Eugene Lhymn	<b>Art Unit</b> 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 2-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, it is unclear what exact entity is "biscuit shaped." Examiner has interpreted said limitation to read, "at least one biscuit shaped partition." Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosman (US Re. 33447) in view of Cohen (US 3179278). With respect to claim 2, Rosman discloses the following:

- an elongated bottom portion (Fig. 9)
- an inside wall and an outside wall extending upwardly from respective side of said bottom portion (Fig. 9)

- an end wall extending upwardly from an end offset bottom, the other end having no end wall (Fig. 9)
- a rib structure formed transversely across the faces of the tray

However, Rosman fails to disclose the indentation being on the inside, and the complementary protrusions on the outside, and instead discloses the indentation being on the outside, and complementary protrusion being on the inside. Nonetheless, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have reverse the placement of the indentation and protrusion since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. In re Einstein, 8 USPQ 167. Rosman also fails to teach a plurality of ribs, which is taught by Cohen (Fig. 13) which shows a similar container arrangement wherein the containers are interfaced via a plurality of ribs, thereby providing more adjustability in a telescoping manner. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention to add a plurality of ribs to the container system of Rosman as taught by Cohen so as to provide more adjustability in a telescoping manner.

With respect to claim 3, Rosman discloses a plurality of means for attaching the inside wall of the tray to a sidewall of a pickup truck, wherein said means is the sidewall flange (Fig. 5).

With respect to claim 4, Rosman discloses a longitudinal flange formed at a top edge of the outside wall (Fig. 5, item 30).

With respect to claim 5, Cohen discloses at least one biscuit shaped partition (Fig. 13, item 72).

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 2 is rejected under 35 U.S.C. 102(b) as being anticipated by Langenbeck (US 4593816). With respect to the claim, Langenbeck discloses the following:

- An adjustable tray comprising of an integrally formed first tray unit including:
  - an elongated bottom portion (Fig.'s 1 & 11)
  - an inside wall and an outside wall extending upwardly from respective size of said bottom portion(Fig.'s 1 & 11);
  - an end wall extending upwardly from an end offset bottom(Fig.'s 1 & 11);
  - a plurality of longitudinally spaced ribs formed transversely across adjoining portions of the bottom portion and the inside wall and the outside wall each set rib forming a shaped inner indentation on inner surfaces of the inside wall, the outside wall and the bottom portion and similarly

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shaped protrusions on outside surfaces of the inside wall the bottom portion and the outside(Fig.'s 1 & 11);

- o wherein the protrusions of the first tray unit are shaped to fit within the indentations of the second tray unit(Fig.'s 1 & 11).

With respect to claim 3, Langenbeck discloses a plurality of means for attaching the inside wall of the tray to a sidewall of a pickup truck, wherein said means is the outwardly extending flange 23.

With respect to claim 4, Langenbeck discloses a longitudinal flange formed at a top edge of the outside wall (Fig. 1, item 23).

With respect to claim 5, Langenbeck discloses at least one biscuit shaped partition (Fig. 2, item 63).

### ***Response to Arguments***

3. Applicant's arguments filed 5/12/06 have been fully considered but they are not persuasive. Applicant argues that Langenbeck has end walls at both ends of the container, and thus not disclosing the claimed subject matter of a "single end wall." However, Langenbeck discloses TWO single end walls, and thus also has one single end wall, thereby meeting the claimed limitation of a "single end wall." The structural feature that there is only one end wall has not been claimed so as to read over the Langenbeck reference.

***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Lhymn whose telephone number is 571-272-8712. The examiner can normally be reached on MTWT 6-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Stephen Castellano  
Primary Examiner